

1 FOSTER PEPPER PLLC  
2 618 West Riverside Avenue  
3 Suite 300  
4 Spokane, WA 99201-5102  
5 Telephone: (509) 777-1600  
6 Facsimile: (844) 462-2906  
7 Email: [todd.reuter@foster.com](mailto:todd.reuter@foster.com)  
8 **Attorneys for Defendants**

9  
10 UNITED STATES DISTRICT COURT  
11 EASTERN DISTRICT OF WASHINGTON  
12 AT SPOKANE

13 JACK B. TRIMBLE and SHIRLEY  
14 TRIMBLE, husband and wife,  
15  
16 Plaintiffs,  
17  
18 v.

No.  
NOTICE OF REMOVAL

19 RAMAN SUMBAL and JANE DOE  
20 SUMBAL, husband and wife; GLOBAL  
21 INTER CONNECT, INC., a foreign  
22 corporation,  
23  
24 Defendants.

25 Defendants, Raman Sumbal, Jane Doe Sumbal and Global Inter Connect,  
26 Inc. ("Defendants") through counsel, hereby remove the above-captioned action,  
currently pending in the Superior Court of the State of Washington in and for the  
County of Yakima, to the United States District Court for the Eastern District of  
Washington. Removal is effected pursuant to 28 U.S.C. §§ 1441 and 1446. The  
Court has subject matter jurisdiction under 28 U.S.C. § 1332(a)(1). As grounds for  
removal, Defendants state as follows:

NOTICE OF REMOVAL - 1

FOSTER PEPPER PLLC  
618 W. RIVERSIDE, SUITE 300  
SPOKANE, WASHINGTON 99201-5102  
PHONE (509) 777-1600 FAX (509) 777-1616

BACKGROUND

1  
2 1. Plaintiffs Jack B. Trimble and Shirley Trimble (“Plaintiffs”)  
3  
4 commenced this action on or about June 21, 2016 by filing a Summons and  
5 Complaint in the Superior Court of the State of Washington in and for the County  
6 of Yakima (the “State Action”), originally styled as *Jack B. Trimble and Shirley*  
7 *Trimble, husband and wife v. Raman Sumbal, Jane Doe Sumbal, husband and*  
8 *wife; and Global Inter Connect Inc., a foreign corporation*, Case No. 16-2-01757-  
9 39.  
10

11  
12 2. This is a civil action over which this Court has original jurisdiction  
13 pursuant to 28 U.S.C. §1332, and is one which may be removed to this Court  
14 pursuant to 28 U.S.C. § 1441, as this is a civil action between citizens of different  
15 states, wherein the matter in controversy exceeds the sum of \$75,000, exclusive of  
16 interest and costs.  
17

18 3. Plaintiffs’ Complaint asserts a cause of action for negligence against  
19 Defendant, Raman Sumbal, relating to injuries Jack B. Trimble allegedly suffered  
20 from a motor vehicle accident. Plaintiffs allege that Defendant, Global Inter  
21 Connect, Inc. is liable for negligence entrustment as the owner of the vehicle  
22 Raman Sumbal was operating on the date of the alleged accident and further allege  
23 negligence under a theory of *respondeat superior*, claiming Raman Sumbal was an  
24  
25  
26

1 employee and acted as an agent of Global Inter Connect, Inc. Plaintiff, Shirley  
2 Trimble, alleges a loss of consortium claim as a result of the injuries suffered by  
3 Plaintiff, Jack B. Trimble.  
4

5 4. The controversy between Plaintiffs and Defendants is a controversy  
6 between citizens of different states:  
7

8 a. Plaintiffs are citizens of the State of Washington. Compl. at 1, ¶ 1.

9 b. Defendants Raman Sumbal and Jane Doe Sumbal are individuals  
10 who are citizens of Ontario, Canada. Compl. at 1, ¶ 2.  
11

12 c. Defendant, Global Inter Connect, Inc., is a Canadian corporation with  
13 its principal place of business in Ontario, Canada. *See* Compl. at 1, ¶  
14 4.  
15

#### 16 SUBJECT MATTER JURISDICTION

17 5. On or about July 25, 2013, the alleged motor vehicle accident between  
18 Plaintiff, Jack B. Trimble and Defendant, Raman Sumbal, occurred. Compl. at 2, ¶  
19 6.  
20

21 6. On or about July 1, 2015, Plaintiffs sent Defendants a pre-suit demand  
22 letter, proposing to settle the claim for \$225,000, annexed hereto as **Exhibit “A.”**  
23

24 7. Defendant, Raman Sumbal, was served with the Summons and  
25 Complaint in the State Action on May 9, 2016. On September 21, 2016, Plaintiffs  
26

1 served the Washington Secretary of State as the agent of process for Global Inter  
2 Connect, Inc. in the state action. Service of Global Inter Connect, Inc. is disputed  
3 as Defendants contest that the statute of limitations had lapsed.  
4

5 8. The Complaint served by the Plaintiffs did not allege specific  
6 damages or provide any information concerning the amount in controversy.  
7

8 9. As stated previously, Plaintiffs commenced this action on or about  
9 June 21, 2016 by filing a Summons and Complaint in the Superior Court for  
10 Yakima County, Washington. On July 11, 2016, Plaintiff obtained an order of  
11 default for failure to answer the Complaint. On September 13, 2016, Defendants  
12 received Plaintiffs' Motion for Entry of Default Judgment Against Defendants. In  
13 their motion, Plaintiffs contended that Jack B. Trimble was entitled to recover  
14 \$12,095.68 in special damages and non-economic damages ranging from \$185,000  
15 to \$250,000. The motion further argued that Shirley Trimble was entitled to an  
16 award of \$20,000 to \$40,000 for her loss of consortium claim. On September 15,  
17 2016, Defendants filed and served their Motion To Set Aside Order of Default. On  
18 September 20, 2016, the Superior Court of the State of Washington in and for  
19 Yakima County set aside the order of default. On September 29, 2016, Plaintiff  
20 moved to reconsider the order granting Defendants' Motion To Set Aside Order of  
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1 Default; however, the Superior Court of the State of Washington in and for  
2 Yakima County denied the motion for reconsideration.

3  
4 10. Although this Notice of Removal is filed more than 30 days after  
5 service of the Complaint in this matter, removal is timely.

6 11. Pursuant to 28 U.S.C. §1446(b), a Notice of Removal “shall be filed  
7 within thirty days after the receipt by the defendant, through service or otherwise,  
8 of a copy of the initial pleading setting forth the claim for relief upon which such  
9 action or proceeding is based.” However, “[i]f the case stated by the initial  
10 pleading is not removable, a notice of removal may be filed within thirty days after  
11 receipt by the defendant, through service or otherwise, of a copy of an amended  
12 pleading, motion, order *or other paper from which it may first be ascertained that*  
13 *the case is one which is or has become removable.*” (emphasis added). In other  
14 words, there are two thirty day periods during which a case may be removed –  
15 either during the first thirty days the defendant receives the initial pleading  
16 (hereinafter “first 30 day window”) or during the first thirty days after defendant  
17 receives an amended pleading, motion, order or other paper from which it is  
18 ascertainable that the case is removable (hereinafter “second 30 day window”).  
19  
20  
21  
22  
23

24 12. As the Plaintiffs’ Complaint did not allege specific damages or  
25 provide any information concerning the amount in controversy, this action was not  
26

1 removable upon service of the Complaint. *See Harris v. Bankers Life & Cas. Co.*,  
2 425 F.3d 689, 694 (9<sup>th</sup> Cir. 2005) (“We now conclude that notice of removability  
3 under [28 U.S.C.] §1446(b) is determined through the examination of the four  
4 corners of the applicable pleadings, not through subjective knowledge or a duty to  
5 make further inquiry.”). Accordingly, this case was not removable during the first  
6 30 day window.  
7

8  
9 13. Furthermore, this action was not removable upon receipt of the  
10 Plaintiffs’ demand letter on or about July 1, 2015. The plain language of 28 U.S.C.  
11 §1446(b) states that “other paper” can only refer to a document that defendant  
12 receives after it receives the initial pleading. Furthermore, Ninth Circuit case law  
13 states that the second thirty-day window only applies to documents received after  
14 the initial pleading. *See Svoboda v. Deutsche Bank Sec., Inc.*, No. C-10-01788 JCS,  
15 2010 U.S. Dist. LEXIS 88836, at \*12-13 (N.D. Cal. August 6, 2010), annexed  
16 hereto as **Exhibit “B.”** Here, Defendants received the pre-suit demand letter ten  
17 months before Raman Sumbal was served with Plaintiffs’ Complaint.  
18  
19  
20

21 14. Furthermore, the U.S. District Court for the Eastern District of  
22 Washington in *Babcock v. ING Life Ins. & Annuity Co.* upheld removal where a  
23 pre-claim settlement letter was sent before the commencement of litigation and  
24 removal was filed beyond thirty days after defendant received the pre-suit demand  
25  
26

1 letter. No. 12-CV-5093-TOR, 2012 U.S. Dist. LEXIS 126091, at \*1-4 (E.D. Wash.  
2 Sept. 5, 2012), annexed hereto as **Exhibit “C”**. The U.S. District Court for the  
3 Eastern District of Washington implicitly recognized that pre-suit demands letters  
4 cannot trigger the second 30 day window. *Id.* As such, Plaintiffs’ pre-suit demand  
5 letter seeking \$225,000 in damages did not make this case removable.  
6

7  
8 15. Plaintiffs’ Motion for Entry of Default Judgment was the first notice  
9 to Defendants, since service of the Summons and Complaint, that the amount  
10 alleged to be in controversy exceeded the jurisdiction limit. As Defendants  
11 received the motion on September 13, 2016, and it has been less than a year since  
12 the action commenced, this Notice of Removal is timely filed pursuant to 28  
13 U.S.C. §1446(b).  
14

15  
16 16. In the alternative, this Notice of Removal is timely filed within thirty  
17 (30) days of service of process on Defendant, Global Inter Connect, Inc. The  
18 United States Court of Appeals for the Ninth Circuit held that each later-served  
19 defendant has its own 30-day period from the date of service to remove the case  
20 with the consent of the defendants to federal court. *Destfino v. Reiswig*, 630 F.3d  
21 952, 956 (9<sup>th</sup> Cir. 2011).  
22

23  
24 17. All Defendants consent to the removal of this action to federal court.  
25  
26

1           18. This Court further has federal jurisdiction over the claim of Plaintiff  
2 Shirley Trimble pursuant to 28 U.S.C. §1367, which authorizes supplemental  
3 jurisdiction over the claims of other plaintiffs in the same Article III case or  
4 controversy, even if the claim is for less than the jurisdiction amount when at least  
5 one named plaintiff in the action satisfies the amount-in-controversy requirement.  
6  
7 *Exxon Mobil Corp. v. Allapattah Svcs, Inc.*, 545 U.S. 546, 549 (2005). Here,  
8 Plaintiff Jack B. Trimble satisfies the amount-in-controversy requirement based on  
9 Plaintiffs' Motion for Entry of Default Judgment.  
10

11  
12           19. By removing this action to this Court, Defendants do not waive any  
13 defenses available to them.

#### 14                           PROCEDURAL REQUIREMENTS

15           20. Removal to the Eastern District of Washington. Pursuant to 28 U.S.C.  
16 §§ 1441(a) and (b), Defendants file this Notice of Removal in the United States  
17 District Court for the Eastern District of Washington, which is the judicial district  
18 embracing the state court in which Plaintiffs filed the State Action.

19           21. Venue. Venue is proper in the Eastern District of Washington  
20 pursuant to 28 U.S.C. § 1391(b)(2) because the subject event occurred in Yakima  
21 County, Washington.

22           22. Timeliness. Defendants first received a copy of the Plaintiffs' Motion  
23 for Entry of Default Judgment Against Defendant on September 13, 2016.  
24 Removal is timely pursuant to 28 U.S.C. § 1446(b)(3).  
25  
26



23. Pleadings. Copies of all papers filed in the State Action at the time of removal are attached hereto as **Exhibit “D”**. The attachment consists of a copy of the following:

- 1(a) Summons & Complaint
- 1(b) Affidavit of Unavailability
- 1(c) Affidavit of Unavailability
- 1(d) Motion for Default
- 1(e) Order of Default
- 1(f) Affidavit of James M. Boyer
- 1(g) Notice of Appearance (Foster Pepper PLLC)
- 1(h) Notice of Statutory Interest in Recovery
- 1(i) Notice of Appearance (Wilson Elser Moskowitz Edelman & Dicker LLP)
- 1(j) Motion for Default Judgment with annexed Affidavit and Exhibits
- 1(k) Note for Motion for Default Judgment
- 1(l) Motion to Set Aside Order of Default with annexed Affidavits and Exhibits
- 1(m) Response to Motion for Entry of Default Judgment
- 1(n) Motion to Shorten Re: Motion to Set Aside Order of Default
- 1(o) Note for Motion to Set Aside Order of Default and Motion to Shorten Time
- 1(p) Opposition to Motion to Set Aside Order of Default and Motion to Shorten Time with annexed Affidavit

1 1(q) Reply in Support of Motion to Set Aside Order of Default

2 1(r) Order Setting Aside Order of Default

3 1(s) Affidavit of James M. Boyer Re: Service of Global Inter  
4 Connect, Inc.

5 1(t) Motion for Reconsideration

6 1(u) Note for Motion for Reconsideration

7 1(v) Order Denying Motion for Reconsideration

8 24. Notice. Pursuant to 28 U.S.C. § 1446(d), Defendants will promptly  
9 give written notice of the filing of this Notice of Removal to all parties in this  
10 action and will promptly file a copy of the Notice of Removal with the Clerk of  
11 Court for the Superior Court for Yakima County.

12 WHEREFORE, this action should proceed in the United States District  
13 Court for the Eastern District of Washington, as an action properly removed  
14 thereto under 28 U.S.C. §§ 1331, 1332, 1441 and 1446.

15 DATED this 11th day of October, 2016:

16  
17 By: s/ Todd Reuter  
18 Todd Reuter, WSBA # 20859  
19 Email: [todd.reuter@foster.com](mailto:todd.reuter@foster.com)  
20 Attorneys for Defendants  
21  
22  
23  
24  
25  
26

**CERTIFICATE OF SERVICE**

I hereby certify that on October 11, 2016, the above document was electronically filed with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the registered CM/ECF participants in this action.

And I further certify that the following non-ECF parties have been served by U.S. Mail, postage prepaid:

MARIANO MORALES JR.  
JAMES M. BOYER  
LAW OFFICES OF MARIANO MORALES JR., P.S.  
1410 NORTH 16<sup>th</sup> STREET  
YAKIMA, WA 98902  
**Via Hand Delivery**

By: s/ Todd Reuter  
Todd Reuter, WSBA # 20859  
Email: [todd.reuter@foster.com](mailto:todd.reuter@foster.com)  
Attorneys for Defendants

FOSTER PEPPER PLLC  
618 W. Riverside Ave., Suite 300  
Spokane, WA 99201  
Telephone: (509) 777-1600  
Facsimile: (844) 462-2906